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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

NO. 842

CALVIN TURNER, et al.,

Appellants,

v.

W. W. FOUCHE, et al.,

Appellees.

On Appeal from the United States District Court for the Southern District of Georgia, Augusta Division

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MOTION TO DISMISS OR AFFIRM

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now the State of Georgia, an Appellee in the above styled proceeding, and pursuant to Rule 16 of this Honorable Court moves (1) that the appeal be dismissed for want of jurisdiction in that it is not one which falls within the scope of 28 U.S.C. § 1253, or, in the alternative (2) to affirm the judgment from

which the appeal was taken on the ground that the questions presented were fully explored and correctly decided below, and so unsubstantial as not to warrant further argument.

This.....day of January, 1969.

ARTHUR K. BOLTON
Attorney General

ALFRED L. EVANS, JR.
Assistant Attorney General

J. LEE PERRY
Assistant Attorney General

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BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM

PART I

OPINION BELOW

The opinion of the United States District Court for the Southern District of Georgia, Augusta Division, which is as yet unreported, is correctly set forth at pp. 29-37 of the Appendix to Appellants' Jurisdictional Statement.

JURISDICTION

Appellants seek to obtain this Court's direct review of a decision of the United States District Court under 28 U.S.C. § 1253. For reasons which are fully set forth in the Argument portion of this brief, it is the position of the State of Georgia, an Appellee, that this Court's jurisdiction is not properly invoked under 28 U.S.C. § 1253 and that under this Court's decision in *Moody v. Flowers*, 387 U.S. 97 (1967) Appellants should have taken their appeal to the United States Court of Appeals for the Fifth Circuit.

QUESTIONS PRESENTED

1. Whether the instant appeal falls within the scope of 28 U.S.C. § 1253 so as to confer direct appellate jurisdiction upon this Court rather than the United States Court of Appeals for the Fifth Circuit?

2. Whether the State statutes attacked by Appellants are so vague and ambiguous as to be violative of the Fourteenth Amendment?

3. Whether any issue of discrimination in connection with a State constitutional requirement that members of county boards of education be "freeholders" has been properly raised, and, if such issue has been properly raised, whether it presents a substantial federal question?

STATEMENT

Calvin Turner, aggrieved by the all-white composition of the 5 member County Board of Education of Taliaferro County, Georgia, brought this action for himself, his minor daughter and for other similarly sit-

uated voters and school children of that county. The gist of the complaint was his contention that the various defendants (i.e. the individual county jury commissioners, grand jurors and members of the county school board) were discriminating against Negro citizens in their county-level administration of those State laws which pertain to the appointment of county school board members, and that as a result Negro citizens were deprived of a voice in school management or affairs. The relationship of the three groups of named defendants lies in the fact that under a State constitutional provision and statutory enactments cited by Appellants (plaintiffs below) the county school board members are appointed by the county grand jury which is in turn selected by the county jury commissioners.

In addition to their main attack upon the allegedly improper administration of relevant State laws by defendant county officials, Appellants, in order to obtain a three-judge district court, injected averments that the enactments were also *facially unconstitutional*. A three-judge district court was convened and the State of Georgia was notified of the action pursuant to 28 U.S.C. § 2284(2). Upon receipt of such notice the State promptly moved to intervene as a party defendant, for the limited purpose of asserting the validity of the attacked constitutional provision and statutes. The motion was granted by the three-judge court.

When the case came on for hearing on January 23, 1968, the State neither introduced evidence nor took part in argument respecting the propriety or impropriety of the county level administration of its statutes by Taliaferro County officials, this being left to the very

able counsel for defendant county officials. The State did urge that if discriminatory administration existed in Taliaferro County it was not only unauthorized by the statutes in question, but was indeed in violation of such State statutes, which in and of themselves were both non-discriminatory and constitutional.

Upon considering the evidence which was introduced, the court observed from the bench that Negroes in Taliaferro County did appear to be being systematically excluded from the county grand jury and consequently had little chance for appointment to the county board of education. The court subsequently adjourned the hearing after directing counsel for the defendant county officials to familiarize said defendants with the provisions of law relating to the prohibition against systematic exclusion of Negroes.

During the adjournment the Judge of the Superior Court of Taliaferro County, in accordance with the United States District Court's oral pronouncement, discharged the grand jury and directed a non-discriminatory recomposition of county jury lists, both traverse and grand. The jury commissioners secured the services of two Negro residents of the county and proceeded to complete the revision. When the new grand jury convened on February 16, 1968, it promptly filled one of the two existing vacancies on the county school board with a Negro citizen of Taliaferro County.

The hearing resumed on February 23, 1968, and evidence of the revised jury lists as well as the procedure under which the new lists were composed was presented in detail by the defendant county officials. Upon consideration of all of the evidence respecting revision of

the jury lists the United States District Court concluded that the same, *as revised,* were neither unconstitutional nor illegal. The court further concluded that the systematic exclusion in administration of the grand jury system prior to the court ordered revision was the result of *faulty administration* of the State constitutional provision and statutes *by local officials,* and not the result of any constitutional defect in the State enactments in and of themselves. In the words of the district court:

> "There is no merit in the three-judge District Court questions presented."

In its final judgment the district court granted Appellants an injunction permanently restraining and enjoining the Jury Commissioner and their successors in office from systematically excluding Negroes from the grand jury system in Taliaferro County, but rejected Appellants' constitutional contentions respecting the statutes *per se.* The court declared instead that the attacked provisions were not unconstitutional. Appellants did not appeal to the United States Court of Appeals for the Fifth Circuit but have instead sought to obtain direct review by this Court pursuant to 28 U.S.C. § 1253.

PART II

ARGUMENT

1. The appeal should be dismissed for want of jurisdiction in that it is not an appeal which falls within the scope of 28 U.S.C. § 1253.

28 U.S.C. § 1253 provides:

> "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an

> interlocutory or permanent injunction in any civil action, suit or proceeding *required* by any Act of Congress to be heard and determined by a district court of three judges." (Italics added.)

In *Moody v. Flowers*, 387 U.S. 97, 101 (1967) this Court emphasized the fact that its jurisdiction to review decisions of United States district courts under this statute was limited to those situations where the action was *required* to be heard and determined by a three-judge court, and did not exist merely because a three-judge court had in fact been convened or rendered a decision. This is in harmony with the related principle that 28 U.S.C. § 2281 (providing for the convening of three-judge courts in certain specified cases) is to be strictly rather than liberally construed. See *Phillips, Governor of Oklahoma v. United States*, 312 U.S. 246, 251 (1941). In *Moody*, for example, the Court pointed out that a three-judge district court was not required in actions brought against local officials unless it was shown that said officials were performing the action complained of pursuant to some statewide law or policy (387 U.S. at pp. 101-102). Quite obviously the "statewide law or policy" exception is not to be permitted to swallow the general rule of inapplicability of 28 U.S.C. § 2281 to actions against county and other local officials by construing the exception to require nothing more than a showing that the local officials were acting under color of state law. To the contrary this Court, in *Ex Parte Bransford*, 310 U.S. 354, 361 (1940), clearly distinguished between those situations where the attack was in reality an attack upon improper administration of the statute (three-judge court *not* required) and those which in fact did amount to a substantial attack on the

statute itself (three-judge court required). In *Bransford* this Court further explained that the matter did not turn on what was alleged in the complaint and that the three-judge court requirement did not apply unless the action complained of *was directly attributable to the statute,* whether or not the statute was alleged to be unconstitutional.

The applicability of the foregoing legal precepts to the instant case is not difficult to discern. While Appellants did make the bald assertion below that a State constitutional provision (Art. VIII, Sec. V, Par. I; Ga. Code Ann. § 2-6801) and certain statutes (Ga. Code Ann. §§ 32-902, 32-902.1, 32-903, 32-905, 59-101 and 59-106) were *racially discriminatory on their face,* the emptiness of this contention is readily seen when one reads the statutes. Not only are they devoid of any mention of race (let alone any provision establishing a classification based upon race) but if anything, when taken together, they run in a direction exactly the opposite from that contended by Appellants. To illustrate, Appellants attack Georgia Laws 1967, page 251 (Ga. Code Ann. § 59-106) [which relates to the revision of jury lists and the selection of grand and traverse jurors] on the ground that it facially discriminates against them on racial grounds. Yet this very provision provides in part:

> "If at any time it appears to the jury commissioners that the jury list so composed, is not a fairly representative cross-section of the upright and intelligent citizens of the county, they shall supplement such list by going out into the county and personally acquainting themselves with other citizens of the county, including upright and intelligent citizens of any significant identifiable group in

the county which may not be fairly represented thereon."

We think it borders on the absurd to say that a jury commissioner of Taliaferro or any other county who engages in racial discrimination in the selection of jurors is doing so "pursuant to statewide law or policy." See *Moody v. Flowers, supra.* He is to the contrary acting in flagrant violation of State law. This, of course, is not a three-judge court matter, *Query v. United States,* 316 U.S. 486, 490 (1942).

We think that examination of the constitutional provision and statutes in question shows quite clearly that the United States District Court for the Southern District of Georgia was entirely correct in concluding that Appellants' grievance was in fact one which was based entirely upon a wrongful administration of perfectly valid State statutes by local officials of Taliaferro County, and that in no instance could it reasonably be said that the wrongful administration by such county officials was directly attributable to the State statutes. The United States District Court was correct in its statement that there was no merit in the three-judge court questions, and, in accordance with *Moody v. Flowers, supra,* Appellants proper procedure was an appeal to the United States Court of Appeals for the Fifth Circuit and not an appeal to this Court under color of 28 U.S.C. § 1253.

2. The judgment of the United States District Court should be affirmed on the ground that it is manifest that the questions upon which the decision depends were fully explored and correctly answered below, and are so unsubstantial as not to warrant further argument.

(a) *The statutes in question are not susceptible to*

constitutional attack upon the ground that they are overly vague and ambiguous.

The State constitutional provision (Article VIII, Sec. V, Par. I of the Constitution of the State of Georgia of 1945, Ga. Code Ann. § 2-6801) and State statutes in question (i.e. Ga. Code Ann. §§ 32-902, 32-902.1, 32-903, 32-905, 59-101 and 59-106) are correctly set forth at pp. 40-45 of the Appendix to Appellants' Jurisdictional Statement.

It has already been pointed out that these provisions are devoid of any mention of race, much less creating discriminatory racial classifications, and that to the contrary they will, if correctly administered, be preventive of even unintentional discrimination. See Ga. Code Ann. § 59-106.

In addition to their rather absurd contention that the statutes are racially discriminatory on their face, however, Appellants also advance the argument that the statutes in question violate the Fourteenth Amendment in that they set forth standards and eligibility requirements which are overly vague and ambiguous. At the outset it may be questioned whether plaintiffs have standing to raise this question. The question of whether or not a statute is so completely unclear as to cause its application to violate the Constitution is ordinarily thought of as being a question of "due process." Yet it is obvious that the factual context in which this question is here raised is one which concerns an alleged wrongful denial of a political office existing pursuant to State law. In *Snowden v. Hughes,* 321 U.S. 1, 6-7 (1944) this Court pointed out that the right to hold *State* political office was derived solely from the relationship of the citizen

to his *State* as established by *State* law and hence could not be the basis of a complaint under either the privileges and immunities clause *or under the "due process" clause* of the Fourteenth Amendment. With respect to its rejection of that plaintiff's "due process" contentions the Court declared:

> "More than forty years ago this Court determined that an unlawful denial by state action of a right to state political office is not a denial of property or of liberty secured by the due process clause * * *. Only once since has this Court had occasion to consider the question and it then reaffirmed that conclusion * * * as we reaffirm it now."

But it is in any event hardly necessary to go to the question of what if any vitality *Snowden v. Hughes* has today. Examination of the statutes and relevant decisions of this Court respecting statutory vagueness amply refutes Appellants' contentions.

To start with it should probably be observed that the obvious reason for the current popularity of attacks upon disliked statutes on the ground of their being unconstitutionally vague is that a plausible argument can almost always be made in support of such attacks. Most words, virtually all sentences, and certainly all statutory or constitutional provisions, are to some extent vague and susceptible of differing interpretations (i.e. "ambiguous"). Nowhere is this more true than in the very constitutional provisions which Appellants rely upon in making this attack. What could be more vague than those Fourteenth Amendment terms "due process" and "equal protection?" Would any attorney be so rash as to say that these much debated terms establish clear cut and/or immutable standards? If all vagueness, uncertainty and ambiguity

were fatal to the validity of statutory enactments we would have no statutes, and both the federal and state constitutions themselves would also have to be declared too vague to stand.

Fortunately, this is not the case. The fact that a statute may require interpretation, that it may be difficult to interpret, or that it is susceptible of different interpretations, will not render it unconstitutional. If a statute is susceptible of any sensible construction at all, it is the duty of the courts to fill in such gaps as may exist and supply such interpretation and construction as may be required to save the law, with due regard being given to its purpose and the intent of the legislature. See, e.g. 82 C.J.S. *Statutes* § 68 (c), pp. 118-19. As stated by this Court in *Screws v. United States,* 325 U.S. 91, 100 (1945):

> "Yet if the Act falls by reason of vagueness so far as due process of law is concerned, there would seem to be a similar lack of specificity when the privileges and immunities clause * * * and the equal protection clause * * * of the Fourteenth Amendment are involved. *Only if no construction can save the Act from this claim of unconstitutionality are we willing to reach that result.*" (Italics added.)

We think that the statutes involved in the instant case do not even come close to the constitutional danger zone (i.e. such complete vagueness and uncertainty as would make it impossible for the Court to furnish any rational construction). Quite to the contrary the present statutes are of far more than average clarity (as statutes go) and really require little "judicial interpretation" at all.

Looking first to Ga. Code Ann. § 59-101, pertaining

to jury commissioners, Appellants say that the standards set forth therein respecting qualifications and eligibility are unconstitutionally vague, indefinite, and uncertain. The lack of any further specificity in Appellants' original complaint caused us at one point to wonder whether under their own theory, their complaint was itself so vague, uncertain and ambiguous as to cause any requirement that defendants respond to the point to be a denial of defendants' right to defend themselves as guaranteed by the "due process" clause of the Fourteenth Amendment. But we will pass this interesting question and proceed instead upon the assumption that the particular qualification complained of is that mentioned in the Jurisdictional Statement, which is the one directing the judge of the superior court, when exercising his discretion regarding the selection of jury commissioners, to select "discreet" persons.

We find it somewhat difficult to understand why Appellants are unable to comprehend this word, which is a word of common usage in the English language, and contained in all standard dictionaries. A "discreet" person is one who is possessed of good judgment or, in other words, prudent. See *Webster's Third New International Dictionary* (3d Ed. 1961), p. 647. Surely this is not an undesirable qualification for a person selected by a judge to be a jury commissioner and it is hoped that the judge would attempt to fill such positions with the most prudent (i.e. discreet) persons available even in the absence of the statutory directive.

What Appellants really dislike, of course, is that the term, as used in the statute, calls for a value judgment on the part of the judge. But there is not yet any con-

stitutional requirement that appointive offices be filled by lottery, by computer or by precise objective standards capable of mathematical application. Somewhere along the line decisions must be made and discretion must be exercised. The latter, it is submitted, necessarily involves value judgments. We think this rule is as applicable to the appointment of county jury commissioners as it is to the appointment of Federal judges, who are permitted to hold their appointive offices, it may appropriately be noted, "during good behavior." See 28 U.S.C. §§ 44, 133, 134.

What we have said above respecting the attack upon Ga. Code Ann. § 59-101 would seem to be equally applicable to Appellants' allegations respecting Ga. Code Ann. § 59-106 which refers to the compiling of a jury list from a cross-section of the "upright and intelligent" citizens of the county. The word "intelligent" surely needs no explanation. Clearly the village idiot can be kept off the jury list without offending the constitution. Nor can the word "upright" be said to pose any great mystery. As in the case of (but undoubtedly with greater specificity than) the phrase "during good behavior," it relates to a person's character and reputation.

As the Court is aware, the law permits men to be hanged or set free through testimony as to their general "reputation" in the neighborhood (and indeed prohibits specifics to be used to further explain or illustrate the term). See 22A C.J.S. *Criminal Law* § 676; 32 C.J.S. *Evidence* §§ 434, 436. Once again the real objection of Appellants is not one of uncertainty or vagueness, but is their dislike of the fact that any discretion at all (which as already pointed out necessarily involves value judg-

ments) exists in the compiling of the jury list. As in the case of jury commissioners the people of Georgia, speaking through their legislature, disagree with Appellants. They think an exercise of judgment in the filling of a public office or position of public responsibility by appointment is wise and desirable. We are quite convinced that this universal practice[1] is constitutional as well as wise.

Finally, Appellants also attack Ga. Code Ann. §§ 32-902, 32-902.1, 32-903 and 32-905, relating to county boards of education, as having "standards set forth therein" which violate the constitution because they are vague, uncertain and ambiguous. Again there were no specifics in their own vague, uncertain and ambiguous complaint as to what standards in these rather lengthy code provisions they complained of. In view of impossibility of knowing what Appellants consider to be vague or unclear, we will avoid the one hundred pages or more which would be required to analyze each and every clause of the statutes and confine ourselves instead to the questions posed by the trial court during the initial hearing in the case. That court's questions all related to the meaning of that clause of Ga. Code Ann. § 32-903 (i.e. qualifications of school board members) which provides:

> ". . . they shall elect men of good moral character, who shall have at least a fair knowledge of the ele-

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[1]At pp. 12-13 of their Jurisdictional Statement, Appellants list juror character qualifications of some twenty states. Concerning many appointive offices, of course, the discretion of the appointing authority is not nearly so limited by statute and such discretion is consequently far broader.

mentary branches of an Engish education and be favorable to the common school system."

In light of what has already been said regarding the attacks on Ga. Code Ann. §§ 59-101 and 59-106, the initial clause (i.e. "good moral character") poses no problem. It simply calls for a value judgment regarding the character of a prospective appointee to the board. It is no more vague than "general reputation in the community" which as already pointed out can determine whether an accused shall be hanged or set free, is at least as clear as the terms "discreet," "upright" and "intelligent," and with the greatest respect we submit it is somewhat clearer than the "during good behavior" which the distinguished justices of this honorable Court are allowed to sit under Art. III, Section I of the United States Constitution. Once again it can be said that there is really no question of vagueness here, but only complaint of the fact that the language calls for a value judgment. As already pointed out, this not only is not a constitutional defect but to the contrary represents the wisdom of the ages as well as presently sound public policy of obtaining the best persons available for public office.

The second clause (i.e. "at least a fair knowledge of the elementary branches of an English education") is a clause which appeared to be somewhat troublesome to the court below and to our way of thinking is perhaps the sole clause which may legitimately be said to require something more than minuscule judicial interpretation. In its historical context it would appear that the term "English education," which appeared in Article VII, Section I, Paragraph I of the Constitution of the State

of Georgia of 1877 respecting the authorization of taxation by the State for:

> ". . . educational purposes in instructing children in the elementary branches of an English education only,"

and which in 1920 was replaced by the broader phrase "for educational purposes" (now in the equivalent revenue provision of the 1945 Constitution, see Art. VII, Sec. II, Par. I; Ga. Code Ann. § 2-5501), was not removed from Ga. Code Ann. § 32-903, which was originally enacted in 1919. See Ga. Laws, 1919, pp. 288, 321. While we have been unable to locate any Georgia decision interpreting the phrase "English education" it does appear that the term is one which was of popular usage in the earlier days of public education. Thus in *Powell v. Board of Education*, 97 Ill. 375, 380 (1851), the Supreme Court of Illinois declared:

> ". . . it must be conceded the education to be afforded to the children of the State . . . is what is popularly understood to be an 'English education.' But what is an 'English education.' Mathematics, geography, geology, and other sciences taught in the schools are no more a part of an English education than they are of a German education. An education acquired through the medium of the English language is an English education; but if the same branches were taught in the German language it would be a German education. It is, therefore, the language employed as a medium of instruction that gives the distinctive character to the education, whether English, German or French, and not the particular branches of learning studied."

Under this construction, coupled with the fact that "elementary branches" manifestly has reference to the

branches or subjects taught in the elementary (or less than high school) grades, see 78 C.J.S. *Schools and School Districts* § 1, p. 608, we submit that the most reasonable construction and interpretation of the qualification "at least a fair knowledge of the elementary branches of an English education" would be a level of learning consisting of or equivalent to at least an elementary school education in the English language (which presumably would include the ability to read and write in the English language).

In any event such language, whether construed in this manner by the Court or whether construed as a lesser requirement of a bare ability to read and write in English, *is susceptible* of plausible construction and hence cannot properly be held to be unconstitutionally vague. *Screws v. United States*, 325 U.S. 91, 100 (1945); 82 C.J.S. *Statutes* § 68 (c), pp. 118-19.

The final clause about which the United States District Court asked questions was the statutory directive that persons selected as members of the county board of education "be favorable to the common school system." We pointed out in that court that the term "common school system" is generally understood to mean the "public school system" consisting of public elementary and high schools, as contradistinguished from colleges, universities and other institutions of higher learning as well as from private or parochial schools. See e.g. 78 C.J.S. *Schools and School Districts* § 1, pp. 606-7. To favor this system simply means to be well disposed toward its maintenance and perpetuation. To illustrate with the reverse side of the coin, we think this qualification means that a person who wishes to abolish public

schools and revert to a system whereunder education is furnished, if at all, only by churches or other private organizations, would not be qualified to be a member of a county school board. A county school board member must, in other words, be in favor of maintaining a system of education at public expense for all eligible children of the county who desire to avail themselves of the same. While we think that this statutory clause really needs little in the way of judicial interpretation, it can at the very least be said that as all of the other statutes discussed herein, it is susceptible of construction and hence can not be said to be unconstitutionally vague.

It is respectfully submitted that Appellants' attacks of unconstitutional vagueness and ambiguity against the State laws in question are as far-fetched as their contention that said laws are racially discriminatory on their face.

(b) *The subsidiary issue of discrimination against individuals who are not "freeholders" respecting membership on county boards of education is not properly raised, and in any event fails to present a substantial federal question.*

Article VIII, Section V, Paragraph I of the Constitution of the State of Georgia of 1945 (Ga. Code Ann. § 2-6801), as well as Ga. Code Ann. § 32-902, provides that members of county boards of education shall be "freeholders."[2] Appellants attack this provision under the equal protection clause of the Fourteenth Amend-

[2]*Black's Law Dictionary* (4th Ed. 1951) p. 793 defines a "freeholder" as one having title to realty either of inheritance or for life.

ment upon the theory that exclusion of non-freeholders from this county political office constitutes an arbitrary and unreasonable classification.

It would seem in the first instance that Calvin Turner is wholly without standing to raise this issue either in his own right or as a representative of any conjectural class of non-freeholders for the simple reason that he testified in open court that he in fact did own real property in Taliaferro County. It would also seem clear from Appellants' concession in the district court that many other Negroes own property in Taliaferro County, that any attempt to inject the race issue into this particular eligibility requirement is truly tilting at windmills. Surely any Negro aspirant for the office of county school board could manage to obtain a conveyance from some property owner of the single square inch of land required to meet this particular requirement. In point of fact Appellants, in raising this wholly academic question, are clearly seeking to obtain an advisory opinion of the Court. There is neither testimony nor any other evidence in the record of anyone, black or white, either in Taliaferro County or anywhere else in Georgia, having been excluded from membership on a county board of education by virtue of the "freeholder" requirement, much less any evidence of the qualification being utilized for purposes of racial discrimination. This sham issue presents neither a case nor a controversy within the meaning of Article III, Section II of the United States Constitution, much less a substantial federal question.

Finally, it may be noted that even if this issue had been properly raised by someone who had been deprived of a public office, Appellants position is contrary to law.

In the absence of any express prohibition in the State Constitution the courts, so far as we have been able to determine, have uniformly upheld property qualifications for political office. See e.g. *Becraft v. Strobel*, 287 N.Y.S. 22, 29 (1936), *aff'd.* 274 N.Y. 577, 10 N.E.2d 560 (1937); *State v. McAllister*, 38 W. Va. 485, 18 S.E. 770, 773 (1893). And in *Vought v. Wisconsin*, 217 U.S. 590 (1910), where a Wisconsin statute requiring jury commissioners to be "freeholders" was attacked as a denial of "due process" and "equal protection" by individuals indicted by grand jurors who had in turn been appointed by such freeholder jury commissioners, this Court thought the federal question so clearly without merit as to justify dismissal on jurisdictional grounds. While the desirability and wisdom of the "freeholder" requirement may indeed be open to question, we think that as far as the constitutionality of the same is concerned, the compilers of the law in 42 Am. Jur. *Public Officers* § 49, were entirely correct when they said:

> "Undoubtedly a legislature has power to impose a property qualification upon office holders."

CONCLUSION

For the reasons stated herein the instant appeal should be dismissed for want of jurisdiction, or, in the alternative the judgment of the United States District Court for the Southern District of Georgia sought to be reviewed should be affirmed on the ground that the questions upon which the decision below depended were fully explored, correctly answered, and do not warrant or justify further argument.

Respectfully submitted,

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